



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

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Date: August 5, 2011

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4945.04-04

4945.04-05

4945.04-06

Contact Person

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

<u>Foundation 1</u>	=
<u>Scientific Endeavor</u>	=
<u>Country</u>	=
<u>Scientists</u>	=
<u>Organization</u>	=
<u>Foundation 2</u>	=
<u>Award</u>	=
<u>X</u>	=

Dear Sir or Madam:

We have considered your ruling request dated March 7, 2008, as revised by your letters of October 27, 2009, July 6, 2010, and May 10, 2011, regarding whether a change in your grant-making activities will adversely affect your tax-exempt status under section 501(a) of the Internal Revenue Code ("Code") as an organization described in section 501(c)(3).

Facts:

You are recognized as exempt under section 501(c)(3) of the Code and classified as a non-operating private foundation pursuant to section 509(a). Your activities include providing funds to further studies in Scientific Endeavor and research by Scientists of Country, Scientists of Country descent, and others who desire to help Country's Scientists. As part of your activities, you make grants to institutions of higher learning directed to programs that:

1. Promote international cooperation in Scientific Endeavor;
2. Support and assist Organization and other international scientific meetings or conferences; and

3. Encourage and support other international activities considered likely to contribute to the development of Scientific Endeavor in any of its aspects: pure, applied, or educational.

Foundation 1 is recognized as exempt under section 501(c)(3) of the Code and classified as a non-operating private foundation pursuant to section 509(a). Foundation 1 was formed to promote research and study in the field of Scientific Endeavor by recognizing excellence in the field. Foundation 1's primary purpose is to recognize past achievement in Scientific Endeavor by awarding an international prize. Currently, two of five trustees of Foundation 1 are disqualified persons with respect to you, as they are lineal descendants of your founder. Since the filing of this ruling request you have made an endowment grant to Foundation 1, primarily to help endow the Award program. This endowment grant is subject to an Expenditure Responsibility Agreement between you and Foundation 1. Foundation 1 has received \$x in one-time endowment grants, one-third of which came from you. Foundation 1 anticipates that the income from these one-time endowment grants will fully fund its grants for the foreseeable future. You do not presently anticipate making future grants to Foundation 1 on similar terms. You are not claiming a qualifying distribution for the endowment grant to Foundation 1.

Organization is a foreign, non-governmental, non-profit scientific organization. Its purpose is to promote international cooperation in Scientific Endeavor. Foundation 2 is a domestic non-profit corporation which is recognized as exempt under section 501(c)(3) of the Code and is classified as a non-operating private foundation pursuant to section 509(a).

Organization, Foundation 1, and Foundation 2 (collectively, "Parties") have entered into a Memorandum of Understanding under which the Parties will establish and administer the Award on an on-going basis. Every four years Foundation 1 will bestow an Award in the field of Scientific Endeavor to an individual selected by Organization. Organization will administer the award selection process, publicize the award, and conduct the award ceremony. This Award will be similar to the prestigious Nobel Prizes, with a gold medallion and a substantial cash prize awarded to an individual recipient. The Award will be presented at the quadrennial meeting of Organization. The award recipient is honored for his prior contributions to the advancement of Scientific Endeavor. The Award program has two parts: (1) a substantial cash prize to the individual recipient, and (2) an equal amount in grants as organizational awards to non-profit organizations recommended by the Award recipient, which are conducting research, education, or other outreach programs in the field of Scientific Endeavor.

Foundation 1 and Foundation 2 have entered into an Award Grant Agreement and Addendum ("Agreement") under which Foundation 2 will administer the Award in conformance with the Award Program Guidelines. Specifically, during each four-year term of the Agreement, Foundation 1 will provide Foundation 2 with funds for the prize and for certain other costs related to the award and presentation of the Award. Foundation 2 will distribute those funds to Organization, individual Award winner, and organizational awardees in furtherance of the charitable purposes of the Award program, Foundation 1, and Foundation 2.

Under the terms of the Agreement, neither Foundation 1 nor Foundation 2 shall make any taxable expenditure, as described in section 4945(d) of the Code, in conjunction with carrying out their duties with respect to the Award. Foundation 2 is required to maintain records and report annually to Foundation 1 on the use of grant funds and to expend those funds in furtherance of the Award program as stated in the Award Program Guidelines. Foundation 2 has agreed not to use any grant funds:

1. To carry on propaganda or otherwise to attempt to influence legislation, within the meaning of section 4945(d)(1);
2. To participate in, intervene in, or attempt to influence any specific public election or to carry on, directly or indirectly, any voter registration drive within the meaning of section 4945(d)(2);
3. To make any grant which does not comply with the requirements of section 4945(d)(3) (relating to grants to individuals) or section 4945(d)(4) (relating to grants to organizations other than public charities); or
4. To undertake any activity for any purposes other than one specified in section 170(c)(2)(B) (relating to the definition of charitable, educational, and similar purpose under the federal income tax law.)

In addition, in order to ensure that amounts paid by Foundation 1 may be treated as qualifying distributions under section 4942(g)(1) of the Code, Foundation 2 shall:

1. Expend all grant funds received from Foundation 1 and any income therefrom by the end of Foundation 2's tax year following Foundation 2's tax year in which such funds were received;
2. Provide such records or other evidence regarding Foundation 2 expenditures and operations as Foundation 1 may reasonably require in connection with Foundation 1's tax-related obligations; and
3. Cooperate in any other manner necessary, in Foundation 1's reasonable discretion, to ensure that it may treat all distributions to Foundation 2 as qualifying distributions within the meaning of section 4942(g)(1) of the Code and may otherwise comply with federal tax law.

Requested Rulings:

1. Your proposed grant-making activity, in the form of endowment grants to Foundation 1, to support activities which further your exempt purposes, will not cause the Service to revoke or modify the determination that you are exempt from federal taxation under section 501(a) of the Code as an organization described in section 501(c)(3).
2. Your grant-making activity in the form of endowment grants to Foundation 1 to support purposes specified in section 170(c)(2)(B) of the Code will not constitute "taxable expenditures" within the meaning of section 4945(d).

Law:

Section 170(c)(2)(B) of the Code states in part, that the term "charitable contribution" means a contribution or gift to or for the use of a corporation, trust, or community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for religious, charitable, scientific, or educational purposes so long as no part of the organization's net earnings inure to the benefit of any private shareholder or individual.

Section 509(a) of the Code describes organizations exempt from federal income tax under section 501(c)(3) of the Code that are private foundations subject to the provisions of Chapter 42 of the Code.

Section 4945(a) of the Code imposes a tax on each "taxable expenditure" of a private foundation as defined in section 4945(d).

Section 4945(d)(3) of the Code provides that a grant to an individual for travel, study, or other similar purposes, is a taxable expenditure unless the grant satisfies the requirements of section 4945(g).

Section 4945(d)(4) of the Code in part provides that a grant to an organization is a taxable expenditure unless such organization is a public charity, an exempt operating foundation, with the private foundation exercises expenditure responsibility with respect to such grant in accordance with section 4945(h).

Section 4945(d)(4)(B) of the Code requires that, in order to avoid making a taxable expenditure, a transferor private foundation must exercise expenditure responsibility in accordance with section 4945(h) on grants made to a private foundation.

Section 4945(d)(5) of the Code provides that a taxable expenditure includes any amount expended by a private foundation for purposes other than exempt purposes under section 170(c)(2)(B).

Section 4945(h) of the Code defines expenditure responsibility in terms of the grantor private foundation requiring pre-grant inquiry and post-grant reports as to the grantee private foundation on its uses of the grant.

Section 4946(a)(1)(A) of the Code provides that a disqualified person, with respect to a private foundation, will include a person who is a substantial contributor to the foundation.

Section 53.4945-5(b)(2) of the Foundation and Similar Excise Taxes Regulations ("foundation regulations") provides that expenditure responsibility includes a requirement that the grantor private foundation must make a pre-grant inquiry of the prospective grantee private foundation. Thus, before making a grant, the grantor must conduct a limited inquiry of the potential grantee.

Such pre-grant inquiry must be complete enough to give a reasonable person assurance that the grantee will use the grant for the proper exempt purposes. This inquiry should concern matters such as the identity, prior history, and experience of the grantee organization and its managers, and any knowledge which the grantor has, based on prior experience or other information which is readily available, concerning the management, activities, and practices of the grantee foundation. The scope of this inquiry may vary from case to case depending upon the size and purpose of the grant, the period of time over which it is to be paid, and the prior experience which the grantor has had with respect to the capacity of the grantee to use the grant for the proper purposes.

Section 53.4945-5(b)(3) of the foundation regulations provides, that, in order to exercise expenditure responsibility, the grantor private foundation must require that the grantee organization be made subject to a written commitment, signed by an appropriate officer, director, or trustee of the grantee, to repay any portion of the amount granted which is not used for the purposes of the grant, to submit full and complete annual reports on the manner in which the grant funds are spent and the progress made in accomplishing the purposes of the grant, to maintain records of receipts and expenditures, and to make its books and records available to the grantor at reasonable times, and not to use any of the funds to carry on propaganda or otherwise attempt to influence legislation within section 4945(d)(1) of the Code, or to influence the outcome of any specific public election, or to carry on any voter registration drive within the meaning of section 4945(d)(2), or to make any grant which does not comply with the requirements of section 4945(d)(3) or 4945(d)(4), or to undertake any activity for any purpose other than one specified in section 170(c)(2)(B) of the Code. The agreement must clearly specify the purposes of the grant. Such purposes may include contributing for capital endowment, provided that neither the grants nor the income therefrom may be used for purposes other than those in section 170(c)(2)(B) of the Code.

Section 53.4945-5(c)(2) of the foundation regulations, on capital endowment grants made to private foundations, provides that, if a private foundation makes a grant to another private foundation for endowment or for other capital purposes, the grantor foundation must require reports from the grantee foundation on the uses of the principal and the income (if any) from the grant funds. The grantee must make such reports annually for its tax year in which the grant was made and for its immediately succeeding two tax years. Only if it is reasonably apparent to the grantor, before the end of such grantee's second succeeding tax year, that neither the principal nor the income from the grant funds has been used for any purpose which would result in liability for tax under section 4945(d) of the Code, may the grantor then allow the grantee's reports to be discontinued.

Rev. Rul. 77-380, 1977-2 C.B. 419, held that grants made by a private foundation to an individual, primarily in recognition of past achievement, with the funds being unrestricted, or earmarked for subsequent travel or study and meeting the requirements of section 4945(g) of the Code, are not taxable expenditures within the meaning of section 4945.

Analysis:

**Ruling #1:** Your proposed grant-making activity, in the form of endowment grants to Foundation 1, to support activities which further your exempt purposes, will not cause the Service to revoke or modify the determination that you are exempt from federal taxation under section 501(a) of the Code as an organization described in section 501(c)(3).

According to your Articles of Incorporation, your purposes are charitable, educational, and scientific, within the meaning of section 501(c)(3) of the Code. You have made an endowment grant to the Foundation 1, which will award an international prize in Scientific Endeavor every four years. This award will recognize prior individual accomplishments in the field of science and will provide funding to non-profit organizations conducting research, education, or other outreach programs in the field of science. Insofar as the activities to be carried out by your grant to the Foundation 1 further your educational and scientific purposes, as provided in the Agreement, Memorandum of Understanding, and Grant Letter you have submitted, your endowment grant to the Foundation 1 does not jeopardize your exemption as a private foundation under sections 509(a) and 501(c)(3).

**Ruling #2:** Your grant-making activity in the form of endowment grants to Foundation 1 to support purposes specified in section 170(c)(2)(B) of the Code will not constitute "taxable expenditures" within the meaning of section 4945(d).

Foundation 1 is a corporation organized and operated exclusively for religious, charitable, scientific, literary and educational purposes. According to its Articles of Incorporation, Foundation 1 will "support charitable, religious, scientific, literary or educational undertakings by making contributions...to organized charitable, religious, scientific, literary or educational bodies or institutions within the meaning of Section 501(c)(3) of the Code." Such purposes are specified in section 170(c)(2)(B).

Your grant to Foundation 1, another private foundation, is a taxable expenditure if it is for any purpose other than one specified in section 170(c)(2)(B) of the Code according to section 4945(d)(5). It is also a taxable expenditure according to section 4945(d)(4)(B) unless you exercise expenditure responsibility as described in section 4945(h).

As noted above, your grant to Foundation 1 furthers your exempt purposes and will also support the exempt purposes, as specified in section 170(c)(2)(B) of the Code, of Foundation 1. You have submitted documentation which demonstrate that you have made a pre-grant inquiry of Foundation 1 as specified in section 53.4945-5(b)(2) of the foundation regulations. You represent in your ruling request letter of March 7, 2008, that your grants to organization recipients that are not described in section 4945(d)(4)(A) are required to execute a Grant Letter. The Grant Letter you have submitted meets the requirements of sections 4945(h) and 53.4945-5(b)(3).



Pursuant to the Award Grant Agreement between Foundation 1 and Foundation 2 described above, Foundation 2 will also comply with the expenditure responsibility requirements of section 4945 and the foundation regulations thereunder in making its grants to avoid making any taxable expenditures. Because the Award grant to the individual is solely for past achievements and not to finance any future activities of the individual, it is not for travel, study, or similar purposes under section 4945(d)(3). See Rev. Rul. 77-380, *supra*. Under the Award program guidelines, the nominees for organizational awards are subject to approval by Foundation 2. Pursuant to the Agreement, Foundation 2 will execute grant agreements to awardees and exercise expenditure responsibility with respect to grants to organizations that are not described in section 4945(d)(4)(A). Accordingly, your grant to Foundation 1 will not be a taxable expenditure, assuming that you obtain the required reports from Foundation 1, make the required reports to the IRS on Form 990-PF, and take appropriate action in the event of any non-compliance with the terms of the Grant Letter.

#### Rulings:

Based on the foregoing, we rule as follows:

1. Your endowment grant to the Foundation 1, to support activities which further your exempt purposes, will not cause the Service to revoke or modify the determination that you are exempt from taxation under section 501(a) of the Code as an organization described in section 501(c)(3).
2. Your endowment grant to Foundation 1 to support purposes specified in section 170(c)(2)(B) of the Code will not constitute a "taxable expenditure" within the meaning of section 4945(d), assuming that you obtain the required reports from Foundation 1, make the required reports to the IRS on Form 990-PF, and take appropriate action in the event of any non-compliance with the terms of the Grant Letter.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Elizabeth Kastenberq for

Mary Jo Salins  
Manager, Exempt Organizations  
Technical Group 4

Enclosure  
Notice 437